

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY LYNCH,

Defendant-Appellant.

UNPUBLISHED

October 18, 2011

No. 290216

Wayne Circuit Court

LC No. 07-021074-FC

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of second-degree murder, MCL 750.317. Defendant was sentenced to 19 to 30 years' imprisonment. We affirm.

Defendant's convictions arise from the bludgeoning death of David Owen, whose body was discovered in a wooded area in Canton, Michigan on August 8, 2007. Owen was last seen alive on the morning of June 14, 2007, when he was released from a hospital after being treated for head injuries that he received during a fight with defendant. A medical examiner and a forensic anthropologist determined that Owen died from a skull fracture and brain injury inflicted by a blunt object. The police searched defendant's house and garage. Blood identified as belonging to Owen was discovered in several areas of defendant's garage. Defendant and codefendant Maurice Brantley were charged with homicide; both men gave statements in which each primarily accused the other of beating Owen with a shovel in defendant's garage on June 14, 2007, after Owen returned from the hospital. Defendant's cellmate testified that defendant confessed to killing Owen. In his testimony, the cellmate stated that defendant said he and an accomplice named "Mo" both assaulted Owen with a shovel, killing him. Defendant and codefendant Brantley were tried jointly, Brantley was tried before a jury and defendant was tried before the trial court. Both men were convicted of second-degree murder.

I. JOINT TRIAL

Defendant argues that reversal is required because he was prejudiced by the joinder of his trial with codefendant Brantley's trial. Defendant specifically argues that his defense and the defense of his codefendant were irreconcilable because each was accusing the other of initiating the crime. Defendant argues that he was prejudiced by the joint trial because the inconsistencies between his version of the facts and Brantley's version of the facts were heard by the fact-finder in his case.

We review a trial court's decision on a motion to sever the trials of multiple defendants for an abuse of discretion. *People v Hana*, 447 Mich 325, 346; 524 NW2d 682 (1994), amended 447 Mich 1203 (1994). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Young*, 276 Mich App 446, 448; 740 NW2d 347 (2007).

In general, a defendant does not have a right to a separate trial. *People v Hurst*, 396 Mich 1, 6; 238 NW2d 6 (1976). Severance is mandated under MCR 6.121(C) only when a defendant clearly and affirmatively demonstrates through an affidavit or offer of proof that his substantial rights will be prejudiced by a joint trial and that severance is the necessary means of rectifying the potential prejudice. *Hana*, 447 Mich at 345-346.

Defendant was tried by the trial court and Brantley was tried by a jury; thus, the trials were not completely joined because defendant and Brantley each had a different fact-finder. The Michigan Supreme Court has recognized that "[t]he use of separate juries is a partial form of severance." *Id.* at 351. In this case, defendant and Brantley were not given separate juries, but rather, defendant elected to be tried by the trial court and Brantley was tried by a jury. The fact that defendant elected to have the trial court determine his guilt or innocence weighs against any finding of prejudice stemming from the elements of his trial that were joined with Brantley's trial. "Unlike a jury, a judge is presumed to possess an understanding of the law, which allows him to understand the difference between admissible and inadmissible evidence or statements of counsel." *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). The trial court in this case acknowledged that it was required to decide defendant's guilt or innocence independently of codefendant Brantley's guilt or innocence. The trial court also recognized that certain evidence that was admissible against Brantley could not be considered for purposes of determining defendant's guilt or innocence. The trial court specifically stated that it would not consider Brantley's statements as evidence against defendant. A trial court's decision regarding joinder will not be reversed on appeal unless the defendant demonstrates that the joinder prejudiced his substantial rights. *Hana*, 447 Mich at 346-347. Because the record evidence does not support a finding that defendant's substantial rights were prejudiced as a result of the joint trial, we find that the trial court's refusal to hold two separate trials was not an abuse of discretion.

II. RIGHT OF CONFRONTATION

Defendant argues that his constitutional right to confront the witnesses against him was violated when the trial court allowed Detective Anthony Chicko to testify regarding Brantley's confession without defendant being present. Chicko was permitted to read Brantley's statement to Brantley's jury when defendant was not present in the courtroom. Because defendant did not complain or otherwise object at trial regarding the alleged Confrontation Clause violation, we review the alleged error for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999). Substantial rights are affected when the defendant is prejudiced. *Id.* at 763. Prejudice occurs when the error affected the outcome of the trial. *Id.*

The Confrontation Clause guarantees an accused in a criminal prosecution the right "to be confronted with witnesses against him." US Const, Am VI; Const 1963, art 1 § 20. The

Confrontation Clause bars the admission of testimonial hearsay of a witness who did not appear at trial unless the witness was unavailable to testify and the defendant had a prior opportunity for cross-examination. *Crawford v Washington*, 541 US 36, 53-54; 124 S Ct 1354; 158 L Ed 2d 177 (2004); *People v Payne*, 285 Mich App 181, 197; 774 NW2d 714 (2009).

In this case, Brantley did not testify against defendant, and Detective Chicko did not testify against defendant when he recounted Brantley's confession. Brantley's confession was admitted only against Brantley in Brantley's case; it was not admitted in defendant's case. The trial court specifically stated that it would not consider Brantley's confession in deciding defendant's guilt or innocence. Thus, defendant was not entitled to confront Brantley, or to confront Detective Chicko with regard to Brantley's statement, and there was no Confrontation Clause violation. Accordingly, there was no plain error affecting defendant's substantial rights.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter